

**Fair Political Practices Commission  
Memorandum**

**To:** Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

**From:** John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Subject:** Approval of 2005 Regulatory Priorities

**Date:** December 1, 2004

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**I. INTRODUCTION AND BACKGROUND**

This memorandum outlines the staff's recommendations for the Commission's CY2005 rulemaking plan. The rulemaking/project calendar is attached as **Appendix 1** and is consistent with the Commission's stated priorities for next year and the priorities set out in the staff memorandum in October. Consistent with prior work plans, this plan allows for quarterly review and revisions and attempts to spread the workload as evenly as possible throughout the year. We have also added new items. We have indicated these items with a "NEW" or "CHANGE" indicator in this memorandum.

In preparing the 2005 calendar, staff has included a total of 20 projects. As we have noted previously, the calendar does not reflect other, nonregulatory duties of the Commission. For example, the staff anticipates significant work on advice letters, litigation, opinions, legislation, and various outreach projects which are part of the regular work load of the agency and involve significant time commitments. Consequently, we are also recommending the Commission reduce the work plan by removing some projects. The projects are indicated by "**PROPOSE REMOVE**" and are the projects that the executive staff identified as lowest priority items.

**A. CAMPAIGN PROJECTS**

1. **MCCAIN-FEINGOLD:** Under the McCain-Feingold Act, federal law requires the costs of a campaign mailing to be paid 100% from federal funds if the mailing supports or opposes a federal candidate. In regard to paraphernalia, such as bumper stickers, pins, and door hangings, the law requires a 36%/64% ratio - where 64% is the maximum that can be paid from state funds. The Commission will consider a regulation to simplify compliance with both the Act's reporting requirements and federal law.

***CHANGE:** This item has been added in response to two questions about compliance with the two bodies of law.*

**2. SAN FRANCISCO OPINION REQUEST:** In a Ranked-Choice Voting System, may a candidate pay for and send mailings to urge voters to rank that sender first and two other candidates in the race as second and third, or would it be a prohibited independent expenditure under section 85501? Also, would the mailing constitute a contribution to either of the other two candidates if there was coordination?

***CHANGE:** This item has been added in response to a request for opinion from the San Francisco City Attorney's Office.*

## **B. CONFLICT OF INTEREST DISQUALIFICATION AND DISCLOSURE**

**4. EXCLUDING APPOINTMENTS AND UNIQUE FINANCIAL EFFECTS FROM THE GOVERNMENTAL SALARY EXCEPTION:** In general, a decision affecting the governmental salary of an official or his or her spouse does not give rise to a conflict of interest unless the decision has a unique effect on the official or his or her spouse as described in regulation 18705.5. Enforcement proposes amending the governmental salary exception in regulation 18705.5(b) by adding the word "appoint" to the regulation, making it clear to a public official, and his or her legal advisor, that it is unlawful for a public official to appoint the official or his or her spouse to a position that is salaried, or that is unsalaried but offers monetary benefits. In addition, language should be added clarifying that it is unlawful for a public official to increase the governmental salary of the official, or his or her spouse, when the official or his or her spouse is the only individual in the job classification or position.

***PROPOSE REMOVE:** Due to the addition of other projects, staff proposes dropping this project to compensate.*

**9. PROCEDURES FOR THE PROMULGATION AND ADOPTION OF CONFLICT OF INTEREST CODES FOR STATE AGENCIES EXEMPT FROM THE ADMINISTRATIVE PROCEDURES ACT:** Section 87300 requires every agency to adopt a conflict of interest code pursuant to the provisions of the Act. Specifically, section 87300 states that "every agency shall adopt and promulgate a Conflict of Interest Code" applicable to its "designated employee[s]." For the purposes of section 87300, "agency" is interpreted to mean any state agency or local government agency. (*Maas* Advice Letter, No. A-98-261.) A "state agency" is defined in the Act as "every state office, department, division, bureau, board and commission, and the Legislature." (Section 82049.) Regulation 18750(c) sets forth the process for adopting and amending a code (other than a nonsubstantive amendment) of a state agency. In pertinent part, a state agency is required (consistent with the Administrative Procedures Act) to do the following:

“(3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code....

....

“(4) File a copy of the notice with the Office of Administrative Law for publication in the California Notice Register at least 60 days before the public hearing or close of the comment period.

“(5) File a copy of the notice (endorsed by the Office of Administrative Law) with the Commission at least 45 days before the public hearing or close of the written comment period.”

However, some state agencies, such as the University of California, the Legislature, and the California State University System are exempt from the requirements of the Administrative Procedures Act and therefore cannot comply with 18750(c)(4) and (5). This project will specify the process used by these agencies.

***CHANGE:*** *This item has been added in response to a question about compliance with 18750 in cases where the state agency is not subject to the Administrative Procedures Act.*

## **Appendix 1: Regulation Calendar**